

Present :

Mr. Justice Ashish Ranjan Das.

Criminal Appeal No. 13509 of 2018

In the matter of:

Biswas Mohammad Kamruzzaman
..... Appellant
-Versus-
The State and another
..... Respondents.
None appears
.....For the appellant.

Mr. Alok Kumar Bhowmik, Advocate
..... Respondent No.2
Mr. Fazlur Rahman Khan, D.A.G
with
Mr. Kazi Eliasur Rahman, A.A.G. and
Ms. Tahmina Sultana, A.A.G
... For the State

Heard on: 03.01.2023

Judgment on: 15.06.2023

Ashish Ranjan Das, J:

Learned Additional Metropolitan Sessions
Judge, 1st Court, Dhaka by his judgment dated
14.05.2017 passed in Metro. Sessions Case No.9070
of 2016 arising out of C.R. Case No. 723 of 2015

found the appellant Biswas Mohammad Kamruzzaman guilty of the offence under section 138 of the Negotiable Instruments Act of 1881 (for short the Act) and there under sentenced him to suffer simple imprisonment for 6(six) months followed by a fine of Tk. 15,00,000/-, the cheque amount. Hence is this criminal appeal.

It appears from the record that the convict appellant in the first instance appeared but finally could not be traced over the period, although the matter has been occurring in the daily cause list.

I have heard the learned advocate for the complainant- respondent No.2 and perused the record.

Short fact is that the complainant is a recognized NGO and the appellant took loan from the complainant organization but did not repay. Finally the appellant issued a cheque of Tk.15,00,000/- on

the pretext of repayment to the cheque being No.2478483 drawn on Prime Bank Limited, Pallobi Branch, Dhaka. However, the cheque was bounced back for deficit of fund. The complainant sent a legal notice dated 24.08.2015 but of no avail. Hence was the case. For the complainant his representative deposed as P.W.1 and exhibited the required documents but as the accused appellant remained all along absent the P.W.1 was not cross-examined nor could he be examined under section 342 of the Code.

The learned advocate for the complainant-respondent took me through the documents to the record and argued that the case was overwhelmingly proved. In a sense its a public money and the appellant has never shown any gesture to adjust the loan.

I find from the memo of appeal that no ground was taken to revert the factual aspect of the case

and I find that the learned trial court was quite justified finding the appellant guilty and the sentence too does not appear harsh where only the cheque amount of Tk.15 (fifteen) lacs was fined.

As a result, the appeal is dismissed.

The judgment of conviction and sentence dated 14.05.2017 passed by the learned Additional Metropolitan Sessions Judge, 1st Court, Dhaka in Metro. Sessions Case No.9070 of 2016 is hereby upheld and the statutory amount in deposit shall go to the complainant. The appellant is directed to appear before the trial court in order to serve out the sentence at once.

Communicate the judgment and L.C. records to the courts below.

(Justice Ashish Ranjan Das)

Bashar B.O.